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7 WVUE 2015-1

8 UNITED STATES BANKRUPTCY COURT FOR  
9 THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 In re:  
12 TULA APONTE aka TULA MIRIAM  
13 APONTE CABRERO  
14 Debtor,

Bk. No. 16-51265-MEH

R.S. No. JLS-326

Chapter 13

**MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY AND CO-DEBTOR  
STAY**

Hearing-

Date: August 19, 2016

Time: 10:00 a.m.

Place: Bankruptcy Court  
280 South First Street  
San Jose, CA

20 WVUE 2015-1, its assignees and/or successors ("Lender" or "Movant"), moves the Court  
21 for relief from the Automatic Stay provided by 11 U.S.C. Section 362. This motion seeks an  
22 Order terminating the Automatic Stay of 11 U.S.C. Section 362 as to moving party (and the  
23 Trustee under the Deed of Trust securing moving party's claim) so that moving party (and its  
24 Trustee) may take all steps necessary under State or Federal law to commence or complete its  
25 foreclosure under the Deed of Trust and thereafter take possession of the subject property. This  
26 Motion relates to the real property located at 1485 Olympic Dr., Milpitas, CA 95035  
27 ("Property"), which is legally described in the Deed of Trust attached to the Declaration of  
28 DAVID HADDAD ("Lender Declaration") as Exhibit "2."

1 In addition, and if applicable, Secured Creditor will seek an order waiving the  
2 requirements of Federal Rule of Bankruptcy Procedure 4001(a)(3), and California Civil Code §  
3 2924g(d), so that any foreclosure sale may be held without the applicable waiting period  
4 specified therein.

5 This Motion is based upon the Lender Declaration, the Memorandum of Points and  
6 Authorities ("Memorandum"), the Relief from Stay Cover Sheet and the pleadings and records  
7 on file in this matter.

8 This motion is brought pursuant to 11 U.S.C. Section 362(d)(1) for "cause" and due to the  
9 following:

10 1. The failure of Debtor to make required payments as set forth in the attached  
11 Lender Declaration. Debtor is three (3) post-petition payments delinquent.

12 2. The bad faith actions of Debtor relating to delaying payment by filing multiple  
13 (five) bankruptcies relating to the Property. As detailed in the Lender Declaration and the  
14 Memorandum, this is the **fifth** bankruptcy relating to the Property.

15 a. Debtor filed a previous Chapter 13 bankruptcy petition on September 8, 2011,  
16 Case No. 11-58431-ASW that was dismissed on October 27, 2011.

17 b. Debtor also filed a previous Chapter 13 bankruptcy petition on December 1, 2011,  
18 Case No. 11-61063-SLJ that was dismissed on October 11, 2013.

19 c. Debtor filed a previous Chapter 13 bankruptcy petition on March 20, 2014, Case  
20 No. 14-51195-MEH ("Third Bankruptcy") that was dismissed on September 30,  
21 2015. The Court required that Debtor confirm a plan or convert the case by  
22 September 30, 2015, which did not occur.

23 d. Co-Debtor filed a previous Chapter 7 bankruptcy petition on December 12, 2014,  
24 Case No. 14-54898-ASW that was discharged on March 24, 2015.

25 3. The bad faith actions of Debtor relating to filing an unconfirmable Plan (as  
26 detailed in the Lender Declaration and Memorandum) that provides for \$0 in payments to Lender  
27 and referral to the MMM Program which has not been done despite this bankruptcy being open  
28 for over three months.

1 In addition, Movant seeks relief pursuant to 11 U.S.C. Section 362(d)(2) and alleges that  
2 in accordance with the information set forth in Lender Declaration, and due to the Debtor's  
3 failure to make required payments, that Debtor does not have any realistic hope for a  
4 reorganization, and that there is insufficient equity present in the subject real Property to justify  
5 the continuance of the Automatic Stay. The value of the Property is \$568,411.00 and there are  
6 liens on the Property totaling approximately \$608,896.96.

7 To the extent applicable, Movant will move this Court for relief from the co-debtor stay  
8 contained in U.S.C. §1301 and will request that any Order allowing relief from stay against  
9 Debtor, or conditioning continuance of the automatic stay against Debtor, be deemed applicable  
10 to the co-debtor and the co-debtor stay. As the Plan provides for no-payments to Lender and  
11 relief from the stay should also be granted as to any co-debtor. Movant's interest would be  
12 irreparably harmed by continuation of the stay in accordance with the Lender Declaration and  
13 Memorandum.

14 In addition, and in the event that the Court continues the Automatic Stay, Movant will  
15 seek adequate protection of its secured interest pursuant to 11 U.S.C. Sections 361 and 362,  
16 including a requirement that Debtor reinstate all past arrearages and immediately commence  
17 regular monthly payments.

18 Furthermore, Movant will also seek attorneys' fees and costs incurred in bringing the  
19 Motion. Movant requests such fees pursuant to the Note and Deed of Trust securing Movant's  
20 claim or pursuant to 11 U.S.C. Section 506(b).

21 In addition, Movant requests such further relief as is just.

22 In the event neither the Debtor nor Debtor's counsel or any interested party appears at a  
23 hearing on this Motion, the Court may grant relief from the Automatic Stay permitting moving  
24 party to foreclose on the Debtor's Property under all defaults, including any pre-petition defaults,  
25 and thereafter obtain possession of such Property without further hearing, or may enter an order  
26 conditioning the continuance of automatic stay.

27 WHEREFORE, Movant prays for judgment as follows:  
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